

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
NATIONAL PARK SERVICE

--ooOoo--

THE CAVERN SUPPLY COMPANY, INC.

Carlsbad Caverns National Park  
New Mexico

--ooOoo--

CC-CACAC/ - 75  
Contract No. ~~14-10-9-900-226~~ Executed March 6, 1970

Covering the Period

January 1, 1970 through December 31, 1989

Amended by Amendment No. 1 dated June 17, 1970  
Amended by letter dated ~~June 17, 1975~~  
Amended by letter dated January 2, 1980

THIS CONTRACT made and entered into by and between the United States of America, acting in this behalf by the Secretary of the Interior, through the Director of the National Park Service, hereinafter referred to as the "Secretary", and The Cavern Supply Company, Inc., a corporation organized and existing under the laws of the State of New Mexico, hereinafter referred to as the "Concessioner":

W I T N E S S E T H

THAT WHEREAS, Carlsbad Caverns National Park was established by Congress to conserve the scenery and the natural and historic objects and the wildlife therein, and to provide for the enjoyment of the same in such manner and by such means as will leave such park unimpaired for the enjoyment of future generations; and

WHEREAS, the accomplishment of the said purposes requires that facilities and services be provided for the public visiting the said park and that all private interest shall be excluded except so far as may be necessary for the accomplishment of said purposes, including accommodation of the public; and

WHEREAS, the United States has not itself provided such necessary facilities and services and desires the Concessioner to establish and operate the same at reasonable rates under the supervision and regulation of the Secretary; and

WHEREAS, the establishment and maintenance of such facilities and services involve a substantial investment of capital and the assumption of the risk of operating loss, and it is therefore proper, in consideration of the obligations assumed hereunder and as an inducement to capital, that the Concessioner be given assurance of security of such investment and of a reasonable opportunity to make a fair profit; and

WHEREAS, it is the intention of the parties that any acts, policies, or decisions of the Secretary under this contract will be consistent with reasonable protection to the Concessioner against loss of its investment and against substantial increase in costs, hazards, and difficulties of its operations hereunder; and

WHEREAS, the Concessioner has provided satisfactory service to the public under a prior contract and the Secretary desires the Concessioner to continue to provide such necessary facilities and services:

NOW, THEREFORE, pursuant to the authority contained in the Acts of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1-3), and October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), and other laws supplemental thereto and amendatory thereof, the said parties, in consideration of the mutual promises herein expressed, covenant and agree to and with each other as follows:

SEC. 1. Term of Contract. (a) This contract shall supersede and cancel Contract No. 14-10-0100-66 effective upon the close of business December 31, 1969, and shall be for and during the term of twenty (20) years from January 1, 1970, provided the construction and improvement program called for in subsection (b) of this section is completed as specified therein, and except as it may be terminated as herein provided.

(b) The Concessioner shall undertake a construction and improvement program of not less than \$142,500 in two phases as follows:

(1) Phase One of said construction and improvement program will include, at a cost of approximately \$87,500, the expansion of the concession building containing the restaurant and gift shop, and additions to the kennels and nursery. The Concessioner shall start this phase on or before June 1, 1970, and shall complete and make available to the public these improvements on or before December 31, 1970.

(2) Phase Two of the said construction and improvement program shall consist of the renovation and remodeling of the underground lunchroom to be undertaken upon completion of the Master Plan for the park, at a cost of approximately \$55,000. The Secretary shall notify the Concessioner of the anticipated completion date of the said Master Plan and shall designate reasonable dates for the start and completion of this phase of the said construction and improvement program.

(c) The Concessioner shall start Phase One of the improvement program as hereinbefore specified and Phase Two as directed by

the Secretary, in such a manner as to demonstrate to the satisfaction of the Secretary that it is in good faith carrying the said program forward reasonably under the circumstances. After approval of plans and specifications for each phase, the Concessioner shall provide the Secretary with such assurances that the appropriate phase of the construction and improvement program will be satisfactorily completed, as the Secretary, in his judgment may require, in the form of contractor's completion bond, completion bond of the Concessioner in an amount not to exceed the low bid for the approved work, or such other document as may be satisfactory to the Secretary. The time for beginning and completing each phase of the construction and improvement program may be extended in the discretion of the Secretary if the Concessioner is delayed due to unavoidable circumstances beyond its control in beginning or completing either or both phases of the said construction and improvement program. In the event the Concessioner fails to complete Phase One of the said construction within the time allotted therefor then this contract shall be for and during the term of two (2) years from January 1, 1970, except as it may be terminated as herein provided, and in the event the Concessioner fails to complete Phase Two of the said construction program within the time allotted therefor then this contract shall terminate on December 31 of the first full year following the date for completion of the said Phase Two of the said construction program, except as it may be terminated as herein provided. If the Concessioner, in good faith, however, commences the above-described construction program on or before the dates hereinbefore specified, or such subsequent dates as may be approved by the Secretary, and for reasons considered by the Secretary to be beyond the control of the Concessioner, fails to complete the said construction within the times hereinbefore granted, the Secretary may grant such additional periods of time within which to complete the said construction, with appropriate extension of the lesser term of this contract if necessary, as may appear reasonable in the circumstances, and if the said construction is completed in such additional periods as may be granted hereunder, this contract shall be effective for the full term of twenty (20) years hereinbefore granted, except as it may be terminated as herein provided. Any construction or related work performed on the items in the aforesaid construction and improvement program in advance of the execution date of this contract will be considered as applying against such program.

(d) The Concessioner may, in the discretion of the Secretary, be relieved in whole or in part of any or all of the obligations of this contract for such stated periods as the Secretary may deem proper upon written application showing circumstances beyond its control warranting such relief.

SEC. 2. Accommodations, Facilities, and Services Authorized.

(a) The Secretary authorizes the Concessioner, during the term of this contract to provide accommodations, facilities, and services for the public within Carlsbad Caverns National Park as follows:

(1) Food and beverage services including a restaurant and an underground lunchroom.

(2) Curio and souvenir shops and stands.

(3) Nursery for the care of visitors' children.

(4) Kennels for the care of visitors' pets.

(5) Parcel checking station.

(6) Limited gasoline dispensing facilities.

(7) Any and all services and facilities which are customary in connection with the above operations.

(b) The Secretary reserves the right to determine and control the nature and type of merchandise and services which may be sold or furnished by the Concessioner within the park.

SEC. 3. Plant, Personnel, and Rates. (a) The Concessioner shall maintain and operate the said accommodations, facilities, and services to such extent and in such manner as the Secretary may deem satisfactory, and shall provide the plant, personnel, equipment, goods, and commodities necessary therefor, provided that the Concessioner shall not be required to make investments inconsistent with an opportunity to make a fair profit on the total of its operations hereunder.

(b)(1) All rates and prices charged to the public by the Concessioner for accommodations, services, or goods furnished or sold hereunder shall be subject to regulation and approval by the Secretary, not inconsistent with an opportunity for the Concessioner to make a fair profit from the total of its operations hereunder. In determining fair profit for this purpose, consideration shall be given to the rate of return required to encourage the investment of private capital and to justify the risk assumed or the hazard attaching to the enterprise; the cost and current sound value of capital assets used in the operation; the rate of profit on investment and percentage of profit in gross revenue considered normal in the type of business involved; the financial history and the future prospects of the enterprise; the efficiency of management; and other significant factors.

(2) Reasonableness of rates and prices will be judged primarily by comparison with those currently charged for comparable accommodations, services, or goods furnished or sold outside of the areas administered by the National Park Service under similar conditions, with due allowance for length of season, provision for peak loads, accessibility, availability and cost of labor and materials, type of patronage, and other conditions customarily considered in determining charges, but due regard may also be given to such other factors as the Secretary may deem significant.

SEC. 4. Land and Improvements. (a) The Secretary will assign for use by the Concessioner during the term of this contract, such pieces and parcels of land and government improvements as may be, in his judgment, necessary and appropriate for the operations authorized hereunder.

(b) The Concessioner may construct or install upon the assigned lands such buildings, structures, and other improvements as are necessary or desirable for the operations authorized hereunder, subject to the prior approval by the Secretary of the location, plans, and specifications thereof, and the Secretary may prescribe the form and contents of application for such approval.

(c) The Secretary shall have the right at any time to enter upon any lands and improvements assigned hereunder for any purpose he

may deem reasonably necessary for the administration of the park and the government services therein, but not so as to destroy or unreasonably interfere with the Concessioner's use of such lands or the improvements thereon.

(d) "Government improvements" as used herein, means the buildings, structures, fixtures, equipment, and other improvements upon the lands assigned hereunder, constructed or acquired by the government and provided by the government for the purposes of this contract. The Concessioner relinquishes and incurs any right to any possessory interest in such government improvements. The cost of any alterations, additions or improvements heretofore or hereafter provided by the Concessioner to government improvements may be expensed or amortized.

(e) The Secretary hereby grants to the Concessioner the right to occupy and use such government improvements during the term and subject to the conditions of this contract.

(f) The Concessioner shall provide all necessary maintenance and repairs of such government improvements, provided that, if a government improvement is damaged by casualty or otherwise to an extent requiring major repair or rebuilding, then the Concessioner shall not be obligated to repair or rebuild such improvement.

SEC. 5. Concessioner's Improvements. (a) "Concessioner's improvements", as used herein, means buildings, structures, fixtures, equipment, and other improvements, affixed to or resting upon the lands assigned hereunder in such manner as to be a part of the realty, provided by the Concessioner for the purposes of this contract, including (1) all such improvements upon the lands assigned at the date hereof, except government improvements; and (2) all such improvements hereafter constructed upon or affixed to the lands assigned, by the Concessioner with the consent of the Secretary.

(b) It is the intention of the parties that the Concessioner shall have a possessory interest in all concessioner's improvements consisting of all incidents of ownership, except legal title which

shall be vested in the United States. However, such possessory interest shall not be construed to include or imply any authority, privilege, or right to operate or engage in any business or other activity and the use or enjoyment of any structure, fixture, or improvement in which the Concessioner has a possessory interest shall be wholly subject to the applicable provisions of this contract and to the laws and regulations relating to the park. The said possessory interest shall not be extinguished by the expiration or other termination of this contract, and may not be terminated or taken for public use without just compensation. Whenever used in this contract, "possessory interest" shall mean the interest described in this paragraph. Performance of the obligations assumed by the Secretary under Section 12 herein shall constitute just compensation in the circumstances therein described.

(c) Any salvage resulting from the removal, severance, or demolition of a concessioner's improvement or any part thereof shall be the property of the Concessioner.

(d) In the event that a concessioner's improvement is removed, abandoned, demolished, or substantially destroyed, and no other improvement is constructed on the site, the Concessioner shall, promptly upon the request of the Secretary, restore the site as nearly as possible to a natural condition.

SEC. 6. Utilities. (a) The Secretary shall furnish utilities to the Concessioner, when available, and at reasonable rates to be fixed by the Secretary, for use in connection with the operations authorized hereunder.

(b) Should any such service not be available or sufficient, the Concessioner may, with the approval of the Secretary and under such requirements as shall be prescribed by him, secure the same at its own expense from sources outside of the park, or may install the same within the park, subject to the following conditions:

(1) Water rights perfected during the term of this contract shall be perfected in the name of the United States. The Concessioner shall not remove or obliterate any ditches or other water systems installed by it in connection with such water rights without first



obtaining written approval from the Secretary.

(2) Any service provided by the Concessioner under this section shall, if requested by the Secretary, be furnished to the government to such an extent as will not unreasonably restrict anticipated use by the Concessioner. The rate per unit charged the government for such service shall be approximately the average cost per unit of providing such service.

(3) All plans, appliances, and ~~machinery~~ ~~to be used~~ in connection with the privileges granted in this section, as well as the location and installation of such appliances and machinery shall first be approved by the Secretary.

SEC. 7. Accounting Records and Reports. (a) The Concessioner shall maintain such accounting records as may be prescribed by the Secretary. It shall submit annually as soon as possible, but not later than sixty (60) days after the 31st day of December, a report for the preceding year giving such information about its business and operations under this contract as may be prescribed by the Secretary, and such other reports and data as may be required by the Secretary. The Secretary shall have the right to verify all such reports from the books, correspondence, memoranda, and other records of the Concessioner and subconcessioner, if any, and of the records pertaining thereto of a proprietary or affiliated company, if any, during the period of the contract, and for such time thereafter as may be necessary to accomplish such verification.

(b) The Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of five (5) calendar years after the close of the business year of the Concessioner and any subconcessioner have access to and the right to examine any of their pertinent books, documents, papers, and records related to this concession contract.

SEC. 8. Opening Balance Sheet. Within ninety (90) days of the execution of this contract, or its effective date, whichever is later, the Concessioner shall submit a balance sheet showing assets and liabilities pertaining to the operations hereunder as of the

beginning of such operations. That balance sheet shall be accompanied by a schedule describing the items sufficiently in detail to establish clearly their identity and respective values. The Secretary reserves the right to verify such balance sheet by audit of the books and records of the Concessioner. If exception is taken by the Secretary to any item or items in the balance sheet as a result of such audit he shall notify the Concessioner of the exception and the books and records will be adjusted accordingly by the Concessioner.

SEC. 9. Franchise Fee. (a) The Concessioner shall pay to the Secretary within sixty (60) days after the 31st day of December of each year during the term of this contract a franchise fee for the privileges authorized herein, as follows:

(1) An annual fee for the use of any government-owned structures assigned to the Concessioner for the purposes of this contract, based on the value of the government-owned structure or structures provided, pursuant to the schedule, identified as "Exhibit A" attached to and made a part of this contract.

(2) In addition to the foregoing, a further sum equal to six and one-half per cent ( $6\frac{1}{2}\%$ ) of the Concessioner's gross receipts, as herein defined, for the preceding year.

(b)(1) The term "gross receipts", as used herein, shall be construed to mean the total amount received or realized by, or accruing to, the Concessioner from all sales, including those through vending machines and other coin-operated devices, for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the privileges authorized in this contract, including gross receipts of subconcessioners as hereinafter defined and commissions earned on contracts or agreements with other persons or companies operating in the park, and excluding gross receipts from the sale of genuine United States Indian and native handicraft, intra-company earnings on account of charges to other departments of the operation (such as laundry), charges to employees for meals, lodgings, and transportation, cash discounts on purchases, cash discounts on sales, returned sales and allowances, interest on money loaned or in bank accounts, income from investments, income from subsidiary companies outside of the park, sales of

property other than that purchased in the regular course of business for the purpose of resale, and sales and excise taxes that are added as separate charges to approved sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid governmental agencies.

(2) The term "gross receipts of subconcessioners" as used in subsection (b)(1) of this section shall be construed to mean the total amount received or realized by, or accruing to, subconcessioners from all sources, including that through vending machines or other coin-operated devices, as a result of the exercise of the privileges conferred by subconcession contracts hereunder without allowances, exclusions, or deductions of any kind or nature whatsoever and the subconcessioners shall report the full amount of all such receipts to the Concessioner within 45 days after the 31st day of December of each year. The subconcessioners shall maintain an accurate and complete record of all items listed in subsection (b)(1) of this section as exclusions from the Concessioner's gross receipts and shall report the same to the Concessioner with the gross receipts. The Concessioner shall be entitled to exclude items listed pursuant to the preceding sentence in computing the franchise fee payable to the Secretary as provided for in subsection (a) of this section.

(c) In case of dispute as to the computation of franchise fees to be paid under this contract, the determination of the Secretary, consistent with the provisions of this section, shall be final.

(d) Within sixty (60) days after the end of the 5th, 10th, and 15th years of this contract, at the instance of either party hereto, the amount and character of the franchise fee provided for in subsection (a) of this section may be reconsidered and such franchise fee provisions inserted in lieu thereof as may be agreed upon between the parties hereto in a written supplemental agreement.

SEC. 10. Bond and Lien. The Secretary may, in his discretion require the Concessioner to furnish a bond conditioned upon the faithful performance of this contract, in such form and in such amount as the Secretary may deem adequate, not in excess of five thousand dollars (\$5,000). As additional security for the faithful performance by the

Concessioner of all of its obligations under this contract, and the payment to the government of all damages or claims that may result from the Concessioner's failure to observe such obligations, the government shall have at all times the first lien on all assets of the Concessioner within the park.

SEC. 11. Termination of Contract by Secretary. In case of any substantial default or continued unsatisfactory performance by the Concessioner under this contract, the Secretary may terminate this contract by the following procedure.

(a) The Secretary shall give to the Concessioner written notice specifying the particulars of the alleged default or unsatisfactory performance.

(b) Not less than thirty (30) days after receipt by the Concessioner of such notice, the Secretary shall grant to the Concessioner an opportunity to be heard upon the charges.

(c) Following such opportunity to be heard, the Secretary shall have power to determine whether there has been such a default or unsatisfactory performance.

(d) If the Secretary shall decide that there has been such a default or unsatisfactory performance, he shall give to the Concessioner written notice of such decision specifying the particulars thereof.

(e) If the Concessioner fails or refuses to remedy such default or unsatisfactory performance within such reasonable period of time as may be fixed by the Secretary, then the Secretary may declare this contract terminated upon such date or upon such contingency as he may deem proper to protect the public interest, provided that such termination of this contract shall not terminate or impair the Concessioner's possessory interest in its improvements, as hereinbefore defined.

SEC. 12. Compensation for Concessioner's Possessory Interest.

(a)(1) If for any reason, the Concessioner shall cease to be authorized to conduct the operations authorized hereunder, or any of them, and thereafter such operations are to be conducted by a successor, whether a private person or an agency of the government, (i) the Concessioner will sell and transfer to the successor designated by the Secretary its possessory interest in concessioner's improvements and all other property of the Concessioner used or held for use in connection with such operations; and (ii) the Secretary will require such successor, as a condition to the granting of a permit or contract to operate, to purchase from the Concessioner such possessory interest and other property, and to pay the Concessioner the fair value thereof. The fair value of a possessory interest shall be deemed to be the sound value of the improvement to which it relates at the time of transfer of such possessory interest, without regard to the term of the contract. The sound value of any structure, fixture, or improvement shall be determined upon the basis of reconstruction cost less depreciation evidenced by its condition and prospective serviceability in comparison with a new unit of like kind, but not to exceed fair market value. Merchandise and supplies shall be valued at replacement cost including transportation. Equipment shall be valued at replacement cost less depreciation and obsolescence. If the Concessioner and the proposed purchaser cannot agree upon the fair value of any item or items, the fair value thereof shall be determined by the majority vote of a board of three appraisers, selected as follows: Each shall name one member of such board and the two members so named shall select the third member. If the third member is not so selected within thirty days, the American Arbitration Association shall be requested by the Secretary to name such third member. The compensation and expenses of the third member shall be paid by the Concessioner and one-half of the amount so paid shall be added to the purchase price. Before reaching its decision, the Board shall give each of the parties a fair and full opportunity to be heard on the matters in dispute.

(2) If the Secretary shall determine that, during the term of this contract or upon its termination for any reason, it is desirable to discontinue the operations authorized hereunder, or any of them, and/or to abandon, remove, or demolish any of the concessioner's improve-

ments, then the Secretary will, before making such determination effective, take such action as may be necessary to assure the Concessioner of compensation (i) for its possessory interest in such improvements in the amount of their book value, provided that if such an improvement is to be replaced by the Concessioner then such compensation shall be the sound value thereof determined as provided in subsection (a)(1) of this section; (ii) for the cost of restoring the land to a natural condition; (iii) for the cost of transporting to a reasonable market for sale such movable property of the Concessioner as may be made useless by such determination; and (iv) for the actual cost to the Concessioner of such removal or demolition, less salvage resulting therefrom.

(3) Payment of the compensation provided for in this section will terminate the Concessioner's possessory interest in the improvements to which it relates and will constitute just compensation for the termination or taking of such possessory interest. The Concessioner relinquishes and waives any right of compensation for any possessory interest in any alterations, additions, or improvements to government improvements heretofore or hereafter provided by the Concessioner.

(b) To avoid interruption of service to the public upon the termination of this contract for any reason, the Concessioner, upon the request of the Secretary, will (1) continue to conduct the operations authorized hereunder for a reasonable time to allow the Secretary to select a successor, or (2) consent to the use by a temporary operator designated by the Secretary of the concessioner's improvements and personal property, not including current or intangible assets, used in the operations authorized hereunder upon fair terms and conditions, provided that the Concessioner shall not be obligated to accept an annual fee for the use of such improvements of less than the sum of the annual depreciation on such improvement, plus three per cent (3%) return on the book value of such improvement.

SEC. 13. Assignment or Mortgage. No transfer or assignment by the Concessioner of this contract or of any part thereof or interest therein, directly or indirectly, voluntary or involuntary, shall be made unless such transfer or assignment is first approved in writing

by the Secretary. The Concessioner's possessory interest in Concessioner's improvements may be assigned, transferred, encumbered or relinquished only with the prior approval in writing by the Secretary. No mortgage shall be executed, and no bonds, shares of stock, or other evidence of interest in, or indebtedness upon, the assets of the Concessioner in the park shall be issued, except for the purposes of installing, enlarging, or improving plant and equipment, and extending facilities for the accommodation of the public in the park, and then only upon prior authorization in writing in each case, obtained from the Secretary. In the event of default on such a mortgage or such other indebtedness, or of other assignment, transfer, or encumbrance, the creditor or any assignee thereof, shall succeed to the possessory interest of the Concessioner in concessioner's improvements, but shall not thereby acquire operating rights or privileges.

SEC. 14. Approval of Subconcession Contracts. All contracts and agreements proposed to be entered into by the Concessioner with respect to the exercise by others of the privileges granted by this contract shall be submitted to the Secretary for his approval and shall be effective only if approved. In the event any such contract or agreement is approved the Concessioner shall pay to the Secretary within sixty days after the 31st day of December each year a sum equal to fifty per cent (50%) of any and all fees, commissions, or compensation payable to the Concessioner thereunder, which shall be in addition to the franchise fee payable to the Secretary on the gross receipts of subconcessioners as provided for in Section 9 of this contract.

SEC. 15. Accommodations for Government Employees. The Concessioner shall furnish available transportation within the park free of charge, and other accommodations at reduced rates, to Federal and State employees visiting the park on official business and to the employees of the park away from their regularly assigned stations, upon the presentation of proper credentials. Payments made by such employees in the absence of such credentials shall be without prejudice to a refund upon later submission thereof.

SEC. 16. Preferential Right. The Concessioner is granted a preferential right, not an exclusive or monopolistic right, to provide

public accommodations, facilities, and services in the park of the character authorized hereunder. The Secretary will request the Concessioner to provide such new or additional accommodations, facilities, or services, of the same character as the Secretary may consider necessary or desirable for the accommodation and convenience of the public. If the Concessioner doubts the necessity, desirability, timeliness, reasonableness, or practicability of such new or additional facilities, the Concessioner shall be allowed sixty (60) days in which to prepare and present its case but, after consideration of the Concessioner's presentation and such hearings or testimony as the Secretary may consider appropriate, the decision of the Secretary in the premises shall be final. If, after such decision, the Concessioner declines or fails within a reasonable time to comply with the request or demand of the Secretary, then the Secretary may, in his discretion, authorize others to provide such accommodations, facilities, or services, but only upon terms and conditions substantially equivalent to those offered or allowed to the Concessioner.

SEC. 17. Cooperation in Emergencies. The Concessioner shall do all within its power, both independently of and at the request of the park officers, to prevent and suppress forest fires, and shall use its best endeavors to the end that its employees and contractors and the employees of contractors will do likewise. The Concessioner shall also assist in the rescue and preservation of lives and property in emergencies within the park, such as floods and searching for missing persons.

SEC. 18. Insurance. The Concessioner shall carry such insurance against losses by fire, public liability, employee liability, and other hazards as is customary among prudent operators of similar businesses under comparable circumstances.

SEC. 19. Concessioner's Employees. (a) The Concessioner shall require its employees who come in direct contact with the public, so far as practicable and if required by the Secretary, to wear a uniform or badge by which they may be known and distinguished as the employees of said Concessioner.

(b) The Concessioner shall not employ or retain in its



service, or permit to remain upon any of the premises herein provided for, any person declared by the Secretary to be unfit for such employment or otherwise objectionable.

(c) The Concessioner shall require its employees to observe a strict impartiality as to rates and services and in all circumstances to exercise courtesy and consideration in their relations with the public. The Concessioner may, subject to the control of the Secretary, grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted hereunder.

SEC. 20. Procurement of Goods, Equipment, and Services. In computing net profits for any purpose of this contract, the Concessioner agrees that its accounts will be kept in such a manner that there will be no diversion or concealment of profits in the operations authorized hereunder by means of arrangements for the procurement of equipment, merchandise, supplies, or services from sources controlled by or under common ownership with the Concessioner or by any other device.

SEC. 21. Nondiscrimination. The Concessioner shall comply with the requirements of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and with regulations heretofore or hereafter promulgated, relating to non-discrimination in employment and in providing facilities and services to the public, as set forth in Exhibit B attached hereto and made a part hereof.

SEC. 22. General Provisions. (a) Operations under this contract shall be subject to the laws of Congress governing the park and the rules and regulations promulgated thereunder, whether now in force or hereafter enacted or promulgated.

(b) Reference in this contract to the "Secretary" shall mean the Secretary of the Interior, and the term shall include his duly authorized representatives.

(c) No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this contract or

to any benefit that may arise herefrom but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

IN WITNESS WHEREOF, the parties hereto have hereunder subscribed their names and affixed their seals.

Dated at Washington, D. C., this 6th day of March, 1970.

UNITED STATES OF AMERICA

By Thomas H. Flynn  
Assistant Director, National Park Service

ATTEST: THE CAVERN SUPPLY COMPANY, INC.

By <u>William C. Wilson</u>	By <u>William C. Wilson</u>
Title <u>President</u>	Title <u>President</u>
	Date <u>March 10, 1970</u>

## GOVERNMENT-OWNED STRUCTURES ASSIGNED TO

THE CAVERN SUPPLY COMPANY, INC.

pursuant to

Concession Contract No. 14-10-9-900-226

Building Number	Description	Annual Fee
B17	Nursery (1) Nursery, play and eating room (2) Storage Toilets, office and corridor Kitchen Kennels Screened play yard	

Total amount due pursuant to subsection 9(a)(1)

\$ 2,575

Approved, effective January 1, 1970, by:

THE CAVERN SUPPLY COMPANY, INC.

UNITED STATES OF AMERICA

By

William R. [Signature]

Title

President

Assistant

Thomas [Signature]  
Director. National Park Service

Concession

Contract No. 14-10-9-900-226

Date \_\_\_\_\_

NONDISCRIMINATION

SECTION I

Requirements Relating to Employment and  
Service to the Public

A. EMPLOYMENT. During the performance of this contract, the Concessioner agrees as follows.

(1) The Concessioner will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Concessioner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessioner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Secretary setting forth the provisions of this nondiscrimination clause.

(2) The Concessioner will, in all solicitations or advertisements for employees placed by or on behalf of the Concessioner state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Concessioner will send to each labor union or representative of workers with which the Concessioner has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Secretary, advising the labor union or workers' representative of the Concessioner's commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Concessioner will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Concessioner will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Concessioner's books, records, and accounts by the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Concessioner's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Concessioner may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Concessioner will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Concessioner will take such action with respect to any subcontract or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Concessioner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary, the Concessioner may request the United States to enter into such litigation to protect the interests of the United States.

B. CONSTRUCTION, REPAIR, AND SIMILAR CONTRACTS: The preceding provisions A(1) through (7) governing performance of work under this contract, as set out in Section 202 of Executive Order No. 11246, dated September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, shall be applicable to this contract, and shall be included in all contracts executed by the Concessioner for the performance of construction, repair, and similar work contemplated by this contract, and for that purpose the term "contract" shall be deemed to refer to this instrument and to contracts awarded by the Concessioner and the term "Concessioner" shall be deemed to refer to the Concessioner and to contractors awarded contracts by the Concessioner.

C. FACILITIES: (1) Definitions: As used herein:  
(i) Concessioner shall mean the Concessioner and its employees, agents, lessees, sublessees, and contractors, and the successors in interest of the Concessioner; (ii) facility shall mean any and all services, facilities, privileges, and accommodations, or activities available to the general public and permitted by this agreement.

(2) The Concessioner is prohibited from: (i) publicizing facilities operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of race, color, religion, sex, or national origin; (ii) discriminating by segregation or other means against any person because of race, color, religion, sex, or national origin in furnishing or refusing to furnish such person the use of any such facility.

(3) The Concessioner shall post a notice in accordance with Federal regulations to inform the public of the provisions of this subsection, at such locations as will ensure that the notice and its contents will be conspicuous to any person seeking accommodations, facilities, services, or privileges. Such notice will be furnished the Concessioner by the Secretary.

(4) The Concessioner shall require provisions identical to those stated in subsection C herein to be incorporated in all of the Concessioner's contracts or other forms of agreement for use of land made in pursuance of this agreement.

## SECTION 11: EMPLOYMENT OF THE HANDICAPPED

The following clauses apply to all concession permits, contracts and subcontracts which exceed \$2,500 as follows:

1. Part A applies to concessions permits, contracts, and subcontracts which provide for performance in less than 90 days.
2. Parts A and B apply to those concession permits, contracts, and subcontracts which provide for performance in 90 days or more and wherein the amount of gross receipts is under \$500,000.
3. Parts A, B, and C apply to those concession permits, contracts, and subcontracts which provide for performance in 90 days or more and the amount of the annual gross receipts is \$500,000 or more.

## SECTION II: EMPLOYMENT OF THE HANDICAPPED

### PART A

1. The Concessioner will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Concessioner agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment, upgrading, demotion or transfer, recruitment or recruitment advertising; lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
2. The Concessioner agrees that, if a handicapped individual files a complaint with the Concessioner that he is not complying with the requirements of the Act, he will (1) investigate the complaint and take appropriate action consistent with the requirements of 20 CFR 741.29 and (2) maintain on file for three years, the record regarding the complaint and the actions taken.
3. The Concessioner agrees that, if a handicapped individual files a complaint with the Department of Labor that the Concessioner has not complied with the requirements of the Act, (1) he will cooperate with the Department in the investigation of the complaint, and (2) he will provide all pertinent information regarding his employment practices with respect to the handicapped.
4. The Concessioner agrees to comply with the rules and regulations of the Secretary of Labor in 20 CFR, Ch VI, Part 741.
5. In the event of the Concessioner's noncompliance with the requirements of this clause, the contract may be terminated or suspended in whole or in part.
6. This clause shall be included in all contracts under which the estimated gross receipts are over \$2,500.



## PART B

1. The Concessioner agrees (1) to establish an affirmative action program, including appropriate procedures consistent with the guidelines and the rules of the Secretary of Labor, which will provide the affirmative action regarding the employment and advancement of the handicapped required by PL 93-112, (2) to publish the program in his employee's or personnel handbook or otherwise distribute a copy to all personnel, (3) to review his program on or before March 31 of each year and to make such changes as may be appropriate, and (4) to designate one of his principal officials to be responsible for the establishment and operation of the program.
2. The Concessioner agrees to permit the examination by the Secretary of the Interior or his designee and/or the Assistant Secretary for Employment Standards, U. S. Department of Labor, or his designee, of pertinent books, documents, papers and records concerning his employment and advancement of the handicapped.
3. The Concessioner agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Assistant Secretary for Employment Standards, U. S. Department of Labor, provided by the Concessioner stating the concessioner's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment and the rights and remedies available.
4. The Concessioner will notify each labor union or representative of workers with which he has a collective bargaining agreement or other contract understanding, that the Concessioner is bound by the terms of Section 503 of the Rehabilitation Act, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

## PART C

1. The Concessioner agrees to submit a copy of his affirmative action program to the Secretary of the Interior and the Assistant Secretary for Employment Standards, U. S. Department of Labor, within 90 days after the award to him of a concession contract or subcontract.
2. The Concessioner agrees to submit a summary report to the Assistant Secretary for Employment Standards, U. S. Department of Labor, by March 31 of each year during performance of the contract, and by March 31 of the year following completion of the contract, in the form prescribed by said Assistant Secretary, covering employment and complaint experience, accommodations made and all steps taken to effectuate and carry out the commitments set forth in the affirmative action program.

Amendment No. 1  
Concession Contract No. 14-10-9-900-226  
The Cavern Supply Company, Inc.  
Carlsbad Caverns National Park

THIS AGREEMENT made and entered into by and between the United States of America, acting in this behalf by the Secretary of the Interior, through the Director of the National Park Service, hereinafter referred to as the "Secretary," and The Cavern Supply Company, Inc., a corporation organized and existing under the laws of the State of New Mexico, hereinafter referred to as the "Concessioner":

W I T N E S S E T H:

THAT WHEREAS, the Secretary and the Concessioner entered into Concession Contract No. 14-10-9-900-226 on March 6, 1970, whereby the Concessioner was authorized to provide food and beverage facilities and related services and facilities for the accommodation of the public in Carlsbad Caverns National Park during the period January 1, 1970, through December 31, 1989; and

WHEREAS, subsection 1(b)(1) provides that the Concessioner shall start Phase One of the agreed upon construction and improvement program on or before June 1, 1970, and shall complete and make available to the public the improvements on or before December 31, 1970; and

WHEREAS, the Concessioner has requested an extension of time to start and complete the construction and improvement program because the delay in execution of the said contract by the Secretary rendered such dates unrealistic; and in order to place the construction period after the summer travel season; and

WHEREAS, the Secretary agrees that the request of the Concessioner is reasonable in the circumstances and in the public interest:

NOW, THEREFORE, the parties hereto covenant and agree to and with each other that Concession Contract No. 14-10-9-900-226 is hereby amended effective at the date hereof as follows:

A. Amend subsection 1(b)(1) by eliminating the dates "June 1, 1970" and "December 31, 1970," and substitute in lieu thereof the dates "October 1, 1970" and "April 30, 1971," respectively;

B. Amend subsection 1(c), by changing "two (2) years" in line 19 to "three (3) years."

IN WITNESS WHEREOF, the parties hereto have hereunder  
subscribed their names and affixed their seals.

Dated at Washington, D. C., this 17th day  
of June, 1970.

UNITED STATES OF AMERICA

By Thomas Flynn  
Assistant Director, National Park Service

ATTEST:

THE CAVERN SUPPLY COMPANY, INC.

By Wardie L. Hubbard By John R. Wilson  
Title Secretary-Treasurer Title President  
Date 6-1-1970



United States Department of the Interior

NATIONAL PARK SERVICE  
WASHINGTON, D.C. 20240

CONTRACT AMENDMENT

IN REPLY REFER TO:

C3823 (680)

195C Jan. 2, 1980

#2

Mr. George W. Crum  
President  
The Cavern Supply Company, Inc.  
Drawer Y  
Carlsbad, New Mexico 88220

Dear Mr. Crum:

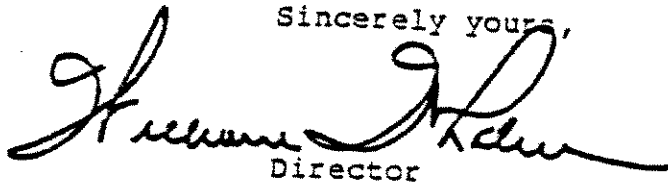
In our April 30, 1979, letter to you, we enclosed a copy of the "Audit Guide for National Park Service Concessioners" which included the newly revised Concessioner Annual Financial Report, Form No. 10-356. In that letter, we advised that all concessioners with annual gross receipts in excess of \$250,000 are required to submit the results of their operations on the Concessioners' Annual Financial Report. The primary schedules which are listed in Part I of the Concessioner Annual Financial Report must be audited by an independent certified or licensed public accountant utilizing the Audit Guide for National Park Service Concessioners issued by the Department of Interior's Office of the Inspector General. While use of the Audit Guide is effective immediately, we advised that reporting on the newly revised Concessioner Annual Financial Report was not mandatory until January 1, 1980, and thereafter. However, we suggested that every effort be made to report on the newly revised form for the 1979 operating year.

At the present time, most concessioners are required by their contract to submit an annual financial report within 60 days after the close of the operating year. We realize that reporting the results of your operations on the newly revised form with the independent accountant utilizing the Audit Guide for National Park Service Concessioners will require additional time. Therefore, I have agreed to extend the submission of the Annual Financial Report from 60 to 90 days. This extension is applicable only to those concessioners with annual gross receipts in excess of \$250,000,

Year of  
the  
Visitor

who submit the results of their operations on the newly revised Concessioner Annual Financial Report utilizing the Audit Guide for National Park Service Concessioners. This extension, of course, does not apply to the payment of the franchise fee.

Sincerely yours,

  
Director

AMENDMENT NO. 3  
CONCESSIONS CONTRACT CC-CACA001-70  
CAVERN SUPPLY COMPANY, INC.  
CARLSBAD CAVERNS NATIONAL PARK

THIS AGREEMENT made and entered into by and between the United States of America, acting in this behalf by the Secretary of the Interior, through the Director the National Park Service, hereinafter referred to as the "Secretary", and Cavern Supply Company, Inc., a corporation organized and existing under the laws of the State of New Mexico, hereinafter referred to as the "Concessioner":

W I T N E S S E T H:

THAT WHEREAS, the Secretary and the Concessioner entered into Concessions Contract CC-CACA001-70 (formerly Contract No. 14-10-0100-66) on March 6, 1970 whereby the Concessioner was authorized to provide food and beverage services including a restaurant and underground lunchroom, curio and souvenir shops and stands, child-care nursery, kennels, parcel checking station and limited gasoline dispensing facilities for the public at Carlsbad Caverns National Park during the period from January 1, 1970 through December 31, 1989, and under Interim Letters of Authorization annually from January 1, 1990 through December 31, 1996; and

WHEREAS, the Secretary and Concessioner have agreed this amendment shall constitute authorization to continue services and operations until termination on December 31, 1997, or upon the execution of a new contractual document on behalf of the National Park Service, whichever occurs first; and

WHEREAS, pursuant to the 36 C.F.R. 51.5, public notice has been published in the Federal Register on December 11, 1996, of the Secretary's intention to make this amendment; and

WHEREAS, the Secretary and the Concessioner agree the services and facilities authorized by this amendment shall be operated pursuant to the terms and conditions set forth in Concessions Contract No. CC-CACA001-70, as amended;

NOW THEREFORE, the parties hereto covenant and agree to and with each other that the Concession Contract CC-CACA001-70 is hereby amended as follows:

1. Modify Section 1 (a) to read:

"This Contract shall be extended for the term of one (1) year from January 1, 1997 through December 31, 1997, or upon the execution of a new contract on behalf of the National Park Service, whichever occurs first"



IN WITNESS WHEREOF, the parties hereto have hereunder  
subscribed their names and affixed their seals.

Executed in Denver, Colorado this 17th day of April,  
1997.

CONCESSIONER

BY: [Signature]  
Cavern Supply Company, Inc.

UNITED STATES OF AMERICA

BY: [Signature]  
Field Director  
Intermountain Field Area

Date: 1-30-97

Intermountain Field Area - National Park Service

AMENDMENT NO. 4  
CONCESSIONS CONTRACT CC-CACA001-70  
CAVERN SUPPLY COMPANY, INC.  
CARLSBAD CAVERNS NATIONAL PARK

THIS AGREEMENT made and entered into by and between the United States of America, acting in this behalf by the Secretary of the Interior, through the Director the National Park Service, hereinafter referred to as the "Secretary", and Cavern Supply Company, Inc., a corporation organized and existing under the laws of the State of New Mexico, hereinafter referred to as the "Concessioner":

WITNESSETH:

THAT WHEREAS, the Secretary and the Concessioner entered into Concessions Contract CC-CACA001-70 (formerly Contract No. 14-10-0100-66) on March 6, 1970 whereby the Concessioner was authorized to provide food and beverage services including a restaurant and underground lunchroom, curio and souvenir shops and stands, child-care nursery, kennels, parcel checking station and limited gasoline dispensing facilities for the public at Carlsbad Caverns National Park during the period from January 1, 1970 through December 31, 1989, under Interim Letters of Authorization annually from January 1, 1990 through December 31, 1996, and under Amendment No. 3 from January 1, 1997 through December 31, 1997; and

WHEREAS, the Secretary and Concessioner have agreed this amendment shall constitute authorization to continue services and operations until termination on December 31, 1998, or upon the execution of a new contractual document on behalf of the National Park Service, whichever occurs first; and

WHEREAS, pursuant to the 36 C.F.R. 51.5, public notice has been published in the Federal Register on December 11, 1996, of the Secretary's intention to make this amendment; and

WHEREAS, the Secretary and the Concessioner agree the services and facilities authorized by this amendment shall be operated pursuant to the terms and conditions set forth in Concessions Contract No. CC-CACA001-70, as amended;

NOW THEREFORE, the parties hereto covenant and agree to and with each other that the Concession Contract CC-CACA001-70 is hereby amended as follows:

1. Modify Section 1 (a) to read:

"This Contract shall be extended for the term of one (1) year from January 1, 1998 through December 31, 1998, or upon the execution of a new contract on behalf of the National Park Service, whichever occurs first"

IN WITNESS WHEREOF, the parties hereto have hereunder subscribed their names and affixed their seals.

Executed in Denver, Colorado this \_\_\_\_\_ day of \_\_\_\_\_, 199\_.

CONCESSIONER

UNITED STATES OF AMERICA

BY: *George W. Prump*  
Cavern Supply Company, Inc.

BY: \_\_\_\_\_  
Director  
Intermountain Region

Date: 12/5/97

AMENDMENT NO. 5  
CONCESSIONS CONTRACT CC-CAVE001-70  
CAVERN SUPPLY COMPANY, INC.  
CARLSBAD CAVERNS NATIONAL PARK

THIS AGREEMENT made and entered into by and between the United States of America, acting in this behalf by the Secretary of the Interior, through the Director of the National Park Service, hereinafter referred to as the "Secretary", and Cavern Supply Company, Inc., a corporation organized and existing under the laws of the State of New Mexico, hereinafter referred to as the "Concessioner":

WITNESSETH:

THAT WHEREAS, the Secretary and the Concessioner entered into Concessions Contract CC-CAVE001-70 (Formerly Contract No. 14-10-0100-66) on March 6, 1970 whereby the Concessioner was authorized to provide food and beverage services including a restaurant and underground lunchroom, curio and souvenir shops and stands, child care nursery, kennels, parcel checking station and limited gasoline dispensing facilities for the public at Carlsbad Caverns National Park during the period from January 1, 1970 through December 31, 1989, under Interim Letters of Authorization annually from January 1, 1990 through December 31, 1996, and under Amendment No. 3 from January 1, 1997 through December 31, 1997; and under Amendment No. 4 from January 1, 1998 through December 31, 1998, and Letters of Authorization from January 1, 1999 through December 2003; and

WHEREAS, the Secretary and Concessioner agree that the services and facilities authorized by this amendment shall be operated pursuant to the terms and conditions set forth in Concessions Contract CC-CAVE001-70, as amended;

NOW THEREFORE, the parties hereto covenant and agree to and with each other that the Concessions Contract CC-CAVE001-70 is hereby amended as follows:

Modify Section 12, Compensation for Concessioner's Possessory Interest by adding:

(c) Upon agreement by both parties, this contract may be negotiated to determine a possessory interest value prior to expiration or termination of this contract. The value determined will be a final determination of value for possessory interest in concessioner improvements which relate to and constitute just compensation for the termination or taking of such possessory interest. Payment for compensation provided in this section will terminate the Concessioner's possessory interest in improvements to which it relates and will constitute just compensation for any possessory interest in alterations, additions, or improvements made prior to the date of this amendment. Any improvements approved and made after the date of execution of this amendment will be valued at book value.

ADD:

EXHIBIT C. Possessory Interest Assets (as attached)

IN WITNESS WHEREOF, the parties hereto have hereunder subscribed their names and affixed their seals.

Executed in Denver, Colorado this 28 day of July, 2003.

CONCESSIONER

BY:   
Cavern Supply Company, Inc.

UNITED STATES OF AMERICA

BY:   
Director  
Intermountain Region

EXHIBIT C

POSSESSORY INTEREST ASSETS

Pursuant to Subsection 5(b) and Subsection 12 a (3)

11,356 square feet consisting of merchandising, food and beverage services, kennel operations and office and storage of the surface facility

An area consisting of merchandising, limited food service and storage for underground operations.

DETERMINED AND AGREED VALUE OF \$1,160,000.00.

CONCESSIONER:

BY: *Frank W. Hoodnutt*  
The Cavern Supply Company, Inc.

Date: 7-16-03

UNITED STATES OF AMERICA

BY: *Hal Sorensen*  
Director  
Intermountain Region

Date: 7/28/03

**AMENDMENT NO. 6  
CONCESSION CONTRACT CC-CAVE001-70  
CAVERN SUPPLY COMPANY, INC.  
CARLSBAD CAVERNS NATIONAL PARK**

**THIS AGREEMENT** is made and entered into by and between the United States of America, acting in this behalf by the Secretary of the Interior, through the Director of the National Park Service, hereinafter referred to as the "Secretary", and The Cavern Supply Company, Inc., a corporation organized and existing under the laws of the State of New Mexico, hereinafter referred to as the "Concessioner".

WITNESSETH:

**WHEREAS**, the Secretary and the Concessioner entered into Amendment No. 5 to Concession Contract CC-CAVE001-70 on July 28, 2003 (as amended, the "Contract"); and

**WHEREAS**, the Secretary and the Concessioner have agreed to a resolution of the value of the Concessioner's possessory interest in Concessioner's improvements, and have agreed to the allocation of such value between the surface improvements and the underground improvements; and

**WHEREAS**, the Secretary has agreed to acquire, contemporaneously with the execution of this Amendment No. 6, the Concessioner's possessory interest in the surface improvements provided by the Concessioner in an amount of \$640,000; and

**WHEREAS**, the parties desire to amend the Contract to implement such resolution;

**NOW, THEREFORE**, the parties, in consideration of the mutual promises set forth herein and for other good consideration, hereto covenant and agree to and with each other that the Concession Contract is hereby amended as follows:

1. Amend SEC. 12. Compensation for Concessioner's Possessory Interest, as follows:

Delete Section 12 (a)(1) and replace with the following:

(a)(1) If for any reason, the Concessioner shall cease to be authorized to conduct the operations authorized hereunder, or any of them, and thereafter such operations are to be conducted by a successor, whether a private person or an agency of the government, (i) the Concessioner will sell and transfer to the successor designated by the Secretary its possessory interest in Concessioner's improvements and all other property of the Concessioner used or held for use in connection with such operations; and (ii) the Secretary will require such successor, as a condition to the granting of a permit or contract to operate, to purchase from the Concessioner such possessory interest and other property, and to pay the Concessioner the fair value thereof. The fair value of the possessory interest in the Concessioner's improvements shall be as set forth in Exhibit C to this Contract. Merchandise and supplies shall be valued at replacement cost including transportation. Equipment shall be valued at replacement cost less depreciation and obsolescence. If the Concessioner and the proposed purchaser cannot agree upon the fair value of any item or items, excluding possessory interest, the fair value thereof shall be determined by the majority vote of a board of three appraisers, selected as follows: Each shall name one member of such board and the two members so named shall select the third member. If the third member is not so selected within thirty days, the American Arbitration Association shall be requested by the Secretary to name such third member. The compensation and expenses of the third member shall be paid by the Concessioner and one-half of the amount so said shall be added to the purchase price. Before reaching its decision, the board shall give each of the parties a fair and full opportunity to be heard on the matters in dispute.

2. Amend SEC. 12. Compensation for Concessioner's Possessory Interest, as follows:

Delete Section 12 (c)

3. Amend Exhibit C. Possessory Interest Assets, as follows:

Delete Exhibit C and replace it with Exhibit C in the form attached to this Amendment.



IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Amendment as of the \_\_\_\_\_ day of January, 2004

**CONCESSIONER**

BY: *Paul W. Hood*

TITLE: *President*

The Cavern Supply Company, Inc.

Date *January 23, 2004*

**UNITED STATES OF AMERICA**

BY: *Marked [Signature]*

Director

Intermountain Region

Date: *2/9/04*

**[CORPORATIONS]**

**ATTEST:**

BY: *Mary J. Walker*

TITLE *Secretary/Treasurer*

**EXHIBIT C**  
**POSSESSORY INTEREST ASSETS**

The following represents the “fair value” of Concession’s possessory interest in accordance with Section 12 (a)(1) of the Contract:

<u>Possessory Interest Asset</u>	<u>Fair Value</u>
The area consisting of merchandising, Limited food service and storage For underground operations	\$520,000.00

**AMENDMENT NO. 7  
CONCESSIONS CONTRACT CC-CAVE001-70  
THE CAVERN SUPPLY COMPANY, INC.  
CARLSBAD CAVERNS NATIONAL PARK**

**THIS AGREEMENT** made and entered into by and between the United States of America, acting in this behalf by the Secretary of the Interior, through the Director of the National Park Service, hereinafter referred to as the "Secretary," and The Cavern Supply Company, Inc., a corporation organized and existing under the laws of the State of New Mexico, hereinafter referred to as the "Concessioner":

**WITNESSETH:**

**WHEREAS**, the Secretary and the Concessioner entered into Amendment No. 5 to Concessions Contract CC-CAVE001-70 (the "Contract") on July 28, 2003, establishing the fair value of the possessory interest under the Contract at \$1,160,000; and

**WHEREAS**, the Secretary and the Concessioner entered into Amendment No. 6 to the Contract on February 9, 2004, the effect of which allocated the fair value of the possessory interest between the surface improvements and the underground operations, extinguished the possessory interest in the surface improvements by payment to the Concessioner of \$640,000, and set that the fair value of the possessory interest in the underground operations at \$520,000; and

**WHEREAS**, the Secretary and the Concessioner desire the National Park Service to extinguish the possessory interest in the underground operations by payment of the current fair value of those assets; and

**WHEREAS**, inflation since the Secretary and the Concessioner executed Amendment No. 5 has been approximately 3% per year; and

**WHEREAS**, at the time the parties executed Amendment No. 5 the National Park Service anticipated awarding a new contract within twelve months but, due to various causes, the National Park Service has been unable to award a new contract as of the effective date of this amendment; and

**WHEREAS**, the Secretary and the Concessioner agree that the amount the National Park Service should pay to extinguish the fair value of the possessory interest should account for inflation since they executed Amendment No. 5; and

**WHEREAS**, the Concessioner has made a capital improvement that qualifies for possessory interest under the terms of the Contract in the amount of \$9,000; and

**WHEREAS**, the National Park Service has determined it will rehabilitate the existing building that houses the surface operations and require the Concessioner temporarily to provide the visitor services from the underground location and in modular facilities on the surface ("Interim Operations"), and the Concessioner has determined an additional capital investment in the amount of \$8,700 will be necessary to conduct the Interim Operations;

**NOW, THEREFORE**, the parties, in consideration of the mutual promises set forth herein and for other good and sufficient consideration, hereby covenant and agree to and with each other that the Concessions Contract is amended as follows:

1. The current fair value of the Concessioner's possessory interest in the underground operations is \$577,000 including additional improvements and inflation since the parties executed Amendment No. 5.

2. By June 1, 2006, the Concessioner will invest \$8,700 in additional capital improvements in the underground location as follows:

- a. Replacement of refrigeration units on both large walk-in cooler boxes: \$7,200
- b. Plumbing repairs and replacement of water heater: \$1,000
- c. Electrical repair and retrofitting: \$500

Upon completion of these capital investments, the fair value of the Concessioner's possessory interest will be \$585,700.

3. No later than June 1, 2006, the Concessioner will submit to the National Park Service a request to be compensated in full for the current fair value of the possessory interest set forth in paragraph 2 of this amendment.

4. On or before September 30, 2006, the National Park Service will remit full payment of that amount to the Concessioner.

5. Other than as set forth herein, the Concessioner will obtain no additional possessory interest under the Contract, as amended.

6. Modify "Section 12. Compensation for Concessioner's Possessory Interest" as follows:

Delete 12(b) and replace with the following:

To avoid interruption of service to the public upon the termination of this contract for any reason, the Concessioner, upon the request of the Secretary, will (1) continue to conduct the operations authorized hereunder for a reasonable time to allow the Secretary to select a successor, or (2) consent to the use by a temporary operator designated by the Secretary of the Concessioner's improvements and personal property, not including current or intangible assets. The Concessioner may charge the temporary

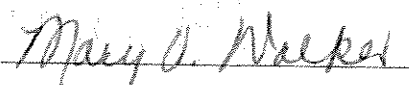
operator a fair and reasonable amount for use of the personal property, but may not charge for the use of the improvements.

7. Upon execution of this amendment, replace the existing "Exhibit C Possessory Interest Assets" with Exhibit C-1 attached to this amendment
8. Upon the payment described in paragraph 4 of this amendment, replace Exhibit C-1 with Exhibit C-2 attached to this amendment.
9. The effective date of this amendment is the date the Director of the Intermountain Region, National Park Service, executes this document.

## CONCESSIONER

By:   
The Cavern Supply Company, Inc.

Attest:



Date: April 28, 2006

## UNITED STATES OF AMERICA

By:   
Director, Intermountain Region

Date: 5/1/06

EXHIBIT C-1

POSSESSORY INTEREST ASSETS

The following represents the "fair value" of the Concessioner's possessory interest in accordance with Section 12(a)(1) of the contract:

<u>Possessory Interest Asset</u>	<u>Fair Value</u>
The area consisting of merchandising, limited food service, and storage for the underground operations	\$585,700

CONCESSIONER:

By: [Signature]  
The Cavern Supply Company, Inc.

Attest:

Mary V. Walker  
Date: April 28, 2006

UNITED STATES OF AMERICA

By: [Signature]  
Director  
Intermountain Region

Date: 5/1/06

EXHIBIT C-2

POSSESSORY INTEREST ASSETS

The following represents the "fair value" of the Concessioner's possessory interest in accordance with Section 12(a)(1) of the contract:

<u>Possessory Interest Asset</u>	<u>Fair Value</u>
The area consisting of merchandising, limited food service, and storage for the underground operations	\$0.00

CONCESSIONER:

By: [Signature]  
The Cavern Supply Company, Inc.

Attest:

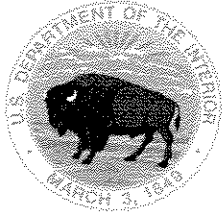
[Signature]

Date: April 28, 2006

UNITED STATES OF AMERICA

By: [Signature]  
Director  
Intermountain Region

Date: 5/1/06



## United States Department of the Interior

NATIONAL PARK SERVICE  
INTERMOUNTAIN REGION  
12795 West Alameda Parkway  
PO Box 25287  
Denver, Colorado 80225-0287



C38 (IMSO-DE-CM)  
CAVE001-70

DEC 29 2003

Mr. Frank Hodnett  
The Cavern Supply Company, Inc.  
624 South Canyon Street  
Carlsbad, New Mexico 88221

RECEIVED

JAN 12 2004

Dear Mr. Hodnett:

The National Park Service has issued the prospectus for a new concession contract. Pending the conclusion of offer evaluations and final contract award, the National Park Service has determined that a new contract will not be awarded by the end of December 31, 2003, at which time the current contract will expire. Therefore an extension of your current concession authorization is necessary.

Accordingly, under the provisions of your current contract that provides for your continuation of operations for a reasonable period of time after expiration, the National Park Service hereby authorizes you to continue operation of visitor services under your concession authorization, as amended, for a reasonable period of time from December 31, 2003, until such time as a new contract for this operation is awarded.

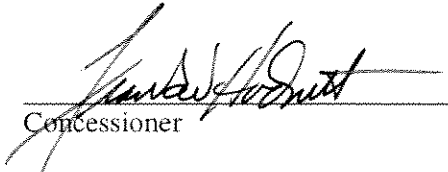
Please indicate your receipt of the authorization by signing this letter in the space provided below and return the fully executed letter to this office by January 9, 2004. A pre-addressed envelope is enclosed for your convenience. We have enclosed a copy of the letter for your files.

Sincerely,

  
Stephen P. Martin  
Director, Intermountain Region

In accepting this authorization, we are not relinquishing any of our current rights or protections as granted to us under the old law, PL-89-249. We have been assured that our current contract will be honored with all rights and conditions stated therein.

Accepted:

  
Concessioner

12-31-03  
Date

Enclosures